

# Exhibit A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**DIEGO FRAUSTO,** )  
Plaintiff, )  
v. )  
**IC SYSTEM, INC.,** )  
Defendant. )  
Case No.: 1:10-cv-1363  
Judge Zagel

**DEFENDANT'S RESPONSES TO PLAINTIFF'S FIRST DISCOVERY REQUESTS**

Defendant, IC SYSTEM, INC. ("IC"), submits these Responses to Plaintiff's First Discovery Requests:

## **GENERAL OBJECTIONS**

1. Defendant objects to the First Discovery Requests (the “Requests”), including the definitions and instructions contained therein, to the extent that they purport to impose obligations greater than those imposed by the Federal Rules of Civil Procedure, the Local Rules, and binding case law.
2. Defendant objects to the Requests to the extent they seek information that is not reasonably calculated to lead to the discovery of admissible evidence.
3. Defendant objects to the Requests to the extent they seek information that is not in defendant’s possession or is within Plaintiff’s possession.
4. Defendant objects to the Requests to the extent that they, or the definitions or instructions applicable to the Requests, contain vague, ambiguous, or undefined terms.
5. Defendant objects to the Requests to the extent they call for information protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other applicable privilege. Defendant will not disclose information protected by any such privileges.

Any disclosure of such information should be deemed inadvertent and not a waiver of any of the protections listed above.

6. Defendant objects to the Requests to the extent they seek trade secrets, commercial or proprietary business information, or any other confidential information. Defendant will produce such information only pursuant to the parties' confidentiality agreement.

7. Defendant reserves the right to object on any ground to the use of any of his responses to the Requests or the subject matter of the Requests in any subsequent proceeding, and at the trial of this action.

8. Defendant reserves the right at any time to revise, correct, supplement, amend, or clarify any responses to the Requests.

Subject to the General Objections above, all of which are incorporated by this reference into each response set forth below, whether or not they are specifically stated.

### **RESPONSES TO SPECIFIC REQUESTS**

#### **REQUESTS FOR ADMISSION**

1. Defendant used an "automatic telephone dialing system" as that term is defined in the FCC's January 4, 2008, order, to call or attempt to call plaintiff more than thirty-seven times.

**RESPONSE:** IC admits that it called the plaintiff using a telephone dialing system that meets the definition of "automatic telephone dialing system" ("ATDS") set forth in the FCC's Declaratory Ruling, No. FCC 07-232. IC admits that it called plaintiff using its telephone dialing system a total of 38 times. IC denies the remaining allegations contained in ¶ 1 and denies that its telephone dialing system meets the definition of ATDS that is set forth in 47 U.S.C. § 227(a)(1).

2. Defendant used an "automatic telephone dialing system" as that term is defined in the FCC's January 4, 2008, TCPA order, to call or attempt to call plaintiff more than fifty-five times.

**RESPONSE:** IC denies the allegations contained in ¶ 2.

## **INTERROGATORIES**

1. Identify all communications and attempted communications, including calls, you or your Dialer made with plaintiff and telephone number [REDACTED]-7867. Include the method of contact (e.g. Dialer or manual dial), where the dialer was physically located, what kind of dialer was used, whether an automated or “live” voice message was left, all persons involved, the date and time of each call and the text of the message that was left, if any.

**ANSWER:** IC objects that this request is overly broad, unduly burdensome, and irrelevant because it seeks information about communications that IC did not make with its telephone dialing system (“TDS”). Such communications have no bearing on the claim plaintiff has alleged under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.

Subject to the above objections, pursuant to Federal Rule 33(d), IC refers plaintiff to the collection screens (which have already been produced) which document all communications that took place between IC and plaintiff. IC will also produce a key for the abbreviations used in the screens and a report showing the date and time of the 38 calls IC made to plaintiff.

IC has four Avaya PDS dialers, all of which are Version 12.0. IC has one Noble dialer, Version 2008.3.1. IC called plaintiff using an Avaya dialer in St. Paul.

The following collectors were involved in IC’s efforts to collect plaintiff’s debt: Matthew McHale (shown in the collection notes as “MMC”) and Denise Bunker (shown in the notes as “DNB”).

2. If you contend that any call made or attempted by you was not made with an automatic telephone dialing system as that term is defined in the FCC’s January 4, 2008, order please explain why. Include identification of all documents that support or refute that contention, including but not limited to: documents concerning your dialer, including manuals, advertisements, emails concerning its use and maintenance, statistics showing usage and efficacy.

**ANSWER:** IC has not located a record of making a call to plaintiff by manually dialing his number.

3. If you contend that any message left by you was not a “an artificial or prerecorded voice” as referred to in 47 U.S.C. §227(b)(1)(A), please explain why, and identify all facts, documents, witnesses and legal authority you know of that support or refute this position.

**ANSWER:** The messages IC left for plaintiff were generated with an artificial or prerecorded voice.

4. Identify your defenses in this case, and identify all facts, documents, witnesses and legal authority you know of that support or refute this position.

**ANSWER:** IC objects to this request to the extent it seeks information protected by the attorney-client privilege and work product doctrine, such as the defense strategy of IC’s counsel. IC objects to the request for legal authorities on the ground that IC has not completed its investigation into the facts or its analysis of the applicable law. Subject to these objections, IC answers as follows:

(a) IC did not commit a *Foti* violation by leaving plaintiff a message which did not disclose IC’s identity. Any message that IC left for plaintiff disclosed IC’s identity in accordance with 15 U.S.C. § 1692d(6). IC’s policy is to only leave messages that disclose IC’s identity. Due to these facts, plaintiff cannot establish the elements of a § 1692d(6) violation, and IC is shielded from liability by the bona fide error defense, 15 U.S.C. § 1692k.

(b) A call made to a cell phone using an automatic telephone dialing system or prerecorded message (“an auto-dialed call”) complies with the Telephone Consumer Protection Act (“TCPA”) if it is made with the called party’s consent. 47 U.S.C. § 227(b)(1). Plaintiff consented to receiving calls that IC made to his cell phone using an automatic telephone dialing system or prerecorded message for the following reasons:

*First*, when a person gives his cell phone number to a creditor in connection with a debt, he gives consent for a debt collector seeking payment of the debt to make auto-dialed calls to that number. Federal Communications Commission Declaratory Ruling, FCC 07-232, ¶ 9. IC

called plaintiff seeking to collect a debt he owed to PayPal. Plaintiff had voluntarily given PayPal the phone number that IC called. Under the FCC ruling, plaintiff consented to receiving auto-dialed calls from IC in its efforts to collect his PayPal debt.

*Second*, plaintiff's PayPal User Agreement expressly reflects that he gave consent to be contacted on his cell phone in connection with his PayPal account. It provides:

By providing PayPal a telephone number (including a wireless/cellular telephone), you consent to receiving autodialed and prerecorded message calls from PayPal at that number. (Agreement § 1.10).

This language reflects that plaintiff consented to receiving on the phone number he provided autodialed calls from or on behalf of PayPal, including any calls made by IC in its efforts to collect the PayPal debt.

*Third*, the PayPal Privacy Policy that is incorporated into the PayPal User Agreement states that PayPal "may share your [plaintiff's] personal information with:"

Service providers under contract who help with parts of our business operations; (fraud prevention, bill collection, marketing, technology services). Our contracts dictate that these service providers only use your information in connection with the services they perform for us and not for their own benefits.

The Privacy Policy further confirms that plaintiff consented to receiving autodialed calls on behalf of PayPal on the phone number he provided.

(c) In the event that the portion of the FCC Declaratory Ruling No. 07-232 which brings predictive dialers within the definition of an ATDS is invalidated or withdrawn, IC will argue that its phone system does not amount to an ATDS under the statutory language set forth in 27 U.S.C. § 227(a)(1).

5. Identify by bates number all document you have, have access to or have reviewed, that mentions or suggests that prerecorded voice messages sometimes cut off on debtors' voice mail. A complete search for such documents would include a search of:

- a. ACA International and other trade publications to which you subscribe or have internet access;
- b. Formal and informal complaints;
- c. Internal communications, such as emails or memoranda;
- d. Suggestions from debtors;
- e. Governmental and regulatory inquiries.

**ANSWER:** IC objects to this request to the extent it seeks information protected by the attorney-client privilege and work product doctrine. Subject to this objection, IC states it is not aware of documents related to the possibility that a prerecorded message will not be completely recorded by a debtor's voicemail or answering machine.

#### **DOCUMENT REQUESTS**

1. All documents that mention or pertain to the plaintiff, Diego Frausto, phone number [REDACTED]-7867, or symbol, number or other designation that is associated with plaintiff.

**RESPONSE:** IC objects to this request to the extent it seeks information protected by the attorney-client privilege and work product doctrine. Subject to that objection, IC will produce documents responsive to this request.

2. A transcript and the actual recording that was used for any communication directed to plaintiff.

**RESPONSE:** A recording of the message will be produced.

3. All documents referred to in the response to any interrogatory.

**RESPONSE:** IC objects to this request to the extent it seeks information protected by the attorney-client privilege and work product doctrine. Subject to that objection, IC will produce documents responsive to this request.

4. All documents relating to any defense you have raised or intend to raise in this case.

**RESPONSE:** IC objects to this request to the extent it seeks information protected by the attorney-client privilege and work product doctrine. Subject to that objection, IC will produce documents responsive to this request.

5. If you contend that any call made or attempted by you was not made with an automatic telephone dialing system as that term is defined in the FCC's January 4, 2008, order please produce all documents that support or refute this contention.

**RESPONSE:** Not applicable.

6. If you contend that any message left by you was not a "an artificial or prerecorded voice" as referred to in 47 U.S.C. §227(b)(1)(A), please produce all documents that support or refute such contention.

**RESPONSE:** Not applicable.

7. All documents that mention or suggest that prerecorded voice messages sometimes cut off on debtors' voice mail. A complete search for such documents would include a search of:

- a. ACA International and other trade publications to which you subscribe or have internet access;
- b. Formal and informal complaints;
- c. Internal communications, such as emails or memoranda;
- d. Suggestions from debtors;
- e. Governmental and regulatory inquiries.

**RESPONSE:** IC does not have documents related to whether a prerecorded voice message may not be recorded completely on a debtor's answering machine or voicemail.

8. All documents that support or refute any defense you have raised or intend to raise in this case.

**RESPONSE:** IC objects to this request to the extent it seeks information protected by the attorney-client privilege and work product doctrine. Subject to that objection, IC will produce documents relating to its defenses.

9. All phone records or other documents that display any communication or attempted communication between you and plaintiff.

**RESPONSE:** IC will produce documents responsive to this request.

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[ppederson@hinshawlaw.com](mailto:ppederson@hinshawlaw.com)

IC SYSTEM, INC.

By: /s/ Peter E. Pederson  
One of its Attorneys

### **CERTIFICATE OF SERVICE**

I the undersigned attorney certify that, on September 28, 2010, I served Defendant's Responses to Plaintiff's First Discovery Requests by emailing a copy to counsel of record identified below.

/s/ Peter E. Pederson

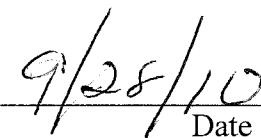
### **SERVICE LIST**

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**VERIFICATION**

I certify under penalty of perjury under the laws of the United States of America that the answers to the foregoing interrogatories are true and correct, to the best of my knowledge and belief.

  
\_\_\_\_\_  
Sue Johnson

  
\_\_\_\_\_  
Date

# Exhibit B

Frausto v IC

Invoice Date	Customer Name	From Number	From City	From State	To Number	To City	To State	Call Date	Call Time	Billable Duration
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/8/2009	10:11:43	0.1
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/8/2009	13:01:19	0.1
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/11/2009	17:40:56	0.1
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/11/2009	20:03:46	0.2
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/13/2009	20:02:25	0.1
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/13/2009	20:53:13	0.2
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/14/2009	12:26:09	0.1
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/14/2009	15:32:24	0.1
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/16/2009	9:47:46	0.1
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/17/2009	19:10:49	0.1
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/18/2009	17:49:57	0.1
8/31/2009	IC System, Inc.	(603) 589-7207	NASHUA	NH	7867	ARLIGTNHTS	IL	8/19/2009	12:14:39	1.6
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/20/2009	17:57:14	0.2
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/21/2009	17:07:27	0.1
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/22/2009	10:49:21	0.1
8/31/2009	IC System, Inc.	(603) 589-7207	NASHUA	NH	7867	ARLIGTNHTS	IL	8/22/2009	13:53:56	0.1
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/23/2009	8:52:07	0.1
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/24/2009	15:15:14	0.1
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/24/2009	20:05:46	0.2
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/25/2009	20:25:15	0.1
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/26/2009	17:39:48	0.2
8/31/2009	IC System, Inc.	(603) 589-7207	NASHUA	NH	7867	ARLIGTNHTS	IL	8/27/2009	15:04:36	0.1
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/27/2009	17:24:18	0.1
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/27/2009	19:33:49	0.2
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/27/2009	20:37:03	0.4
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/28/2009	12:48:31	0.2
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/28/2009	16:30:10	0.1
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/29/2009	8:11:09	0.2
8/31/2009	IC System, Inc.	(603) 589-7207	NASHUA	NH	7867	ARLIGTNHTS	IL	8/29/2009	13:15:25	0.1
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/30/2009	15:32:24	0.1
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/31/2009	13:40:49	0.2
8/31/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	8/31/2009	17:02:53	0.2
9/30/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	9/1/2009	19:26:57	0.2
9/30/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	9/1/2009	20:29:31	0.1
9/30/2009	IC System, Inc.	(603) 589-7207	NASHUA	NH	7867	ARLIGTNHTS	IL	9/2/2009	15:47:07	0.1
9/30/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	7867	ARLIGTNHTS	IL	9/2/2009	18:18:34	0.2

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9/30/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	[REDACTED]	7867	ARLIGTNHTS	IL	9/2/2009	20:01:43	0.2
9/30/2009	IC System, Inc.	(651) 204-1349	ST PAUL	MN	[REDACTED]	7867	ARLIGTNHTS	IL	9/2/2009	20:45:54	0.2
[REDACTED]											

# Exhibit C

<p>1 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION ----- DIEGO FRAUSTO, Plaintiff, vs. IC SYSTEM, INC., Defendant. ----- The Deposition of SCOTT ELLISON, taken pursuant to Notice of Taking Deposition, taken before Laurie A. Kjeldsen, a Notary Public in and for the County of Ramsey, State of Minnesota, on the 14th day of January, 2011, at 444 Highway 96, Vadnais Heights, Minnesota, commencing at approximately 1:30 p.m.  AFFILIATED COURT REPORTERS 2935 Old Highway 8 St. Paul, Minnesota 55113 (612) 338-4348</p>	<p>3 PROCEEDINGS (Witness sworn) SCOTT ELLISON called as a witness, being first duly sworn, was examined and testified as follows: * * * EXAMINATION * * * BY MR. BURKE: Q. Would you state your name for the record, please? A. Scott Ellison. Q. Mr. Ellison, my name is Alex Burke, and I represent the plaintiffs in a lawsuit called Frausto versus IC System, Incorporated. Have you ever given a deposition before? A. No, I have not. Q. Here's the deal, especially since we're on the telephone. I would request that you please make audible answers, both so I can hear them and so the court reporter can write them down, okay? A. Okay. Q. If you need a break for any reason, just let</p>
<p>2 1 APPEARANCES: 2 ON BEHALF OF THE PLAINTIFF VIA TELEPHONE: 3 4 ALEXANDER H. BURKE Burke Law Offices, LLC 155 North Michigan Avenue 5 Suite 9020 6 Chicago, Illinois 60601 7 ON BEHALF OF THE DEFENDANT VIA TELEPHONE: 8 PETER E. PEDERSON Hinshaw &amp; Culbertson, LLP 9 222 North LaSalle Street Suite 300 10 Chicago, Illinois 60601 11 ALSO PRESENT: 12 13 DONALD P. FITZGERALD III Vice President, Corporate Counsel 444 Highway 96 East 14 St. Paul, Minnesota 55127 15 *** 16 DEPOSITION OF SCOTT ELLISON 17 18 Examination: Page 19 Mr. Burke 3 20 Mr. Pederson 17 21 Mr. Burke 22 22 Exhibits: Page 23 1 Caption 5 24 25</p>	<p>4 1 us know, and we'll take a break. We'll just 2 put the phone on hold, and you can go do 3 whatever you want to do, okay? 4 A. Okay. 5 Q. I think this is going to be pretty quick 6 today. 7 Mr. Ellison, is there any reason 8 why you can't give complete and accurate 9 testimony today? 10 A. No. 11 Q. Are you on any medications or have any 12 conditions that prevent you from doing so? 13 A. No. 14 Q. Great. Where are you employed, Mr. Ellison? 15 A. IC System. 16 Q. What is IC System? 17 A. We're a collection agency. 18 Q. Where is IC System located? 19 A. In Vadnais Heights, Minnesota. 20 Q. Is that near St. Paul? 21 A. It's north of St. Paul, yes. 22 Q. What is your position at IC System? 23 A. The dialer operations manager. 24 Q. What are your duties as dialer operations 25 manager?</p>

<p style="text-align: center;">5</p> <p>1 A. It's my duty to execute call strategies set 2 forth by our analytics and collection 3 operations people.</p> <p>4 Q. Mr. Ellison, are you aware that you're here 5 today as a corporate representative?</p> <p>6 A. Yes.</p> <p>7 MR. BURKE: Is there a copy of 8 the notice of deposition there?</p> <p>9 THE COURT REPORTER: Yes, there 10 is.</p> <p>11 MR. BURKE: Okay. Would you 12 please mark that as Exhibit A and tender it 13 to the witness?</p> <p>14 (Deposition Exhibit Letter A was 15 marked for identification.)</p> <p>16 MR. PEDERSON: Just for clarity, 17 can you identify the date of the deposition 18 notice that you're talking about, Alex, 19 because there have been a couple of 20 different notices, and they listed different 21 subjects?</p> <p>22 MR. BURKE: So the deposition 23 notice that I believe the witness has has a 24 certificate of service dated January 12th, 25 2010 on the second page.</p>	<p style="text-align: center;">7</p> <p>1 Q. Have you been designated by IC System, 2 Incorporated to testify on its behalf as to 3 that topic?</p> <p>4 A. Yes.</p> <p>5 Q. Great. How long have you worked at IC 6 System?</p> <p>7 A. 18 years.</p> <p>8 Q. When you began 18 years ago, what did you do 9 at IC System?</p> <p>10 A. I started as a collector.</p> <p>11 Q. Over the 18 years, can you give me the 12 highlights of changes in positions, from 13 collector to --</p> <p>14 A. I went from a collector to a collection 15 supervisor, to a collection operations 16 manager, to my current position.</p> <p>17 Q. When did you go from collection operations 18 manager to dialer operations manager?</p> <p>19 A. Approximately four years ago. I believe it 20 was January of '07.</p> <p>21 Q. When you say "dialer," what do you mean?</p> <p>22 A. Our automated dialer systems.</p> <p>23 Q. How many dialers does IC System have?</p> <p>24 A. Five.</p> <p>25 Q. Where are they located?</p>
<p style="text-align: center;">6</p> <p>1 BY MR. BURKE:</p> <p>2 Q. Would that be correct, Mr. Ellison?</p> <p>3 A. I haven't seen the copy yet.</p> <p>4 THE COURT REPORTER: (Hands 5 exhibit.)</p> <p>6 THE WITNESS: That's correct.</p> <p>7 BY MR. BURKE:</p> <p>8 Q. And for the record, if you turn to the first 9 page, we are not dealing with the topic in 10 the third box.</p> <p>11 A. Okay.</p> <p>12 Q. Would you please read topic one or the first 13 topic to yourself?</p> <p>14 A. (Reviews document.)</p> <p>15 Q. Are you competent to testify as to that 16 subject?</p> <p>17 A. Yes.</p> <p>18 Q. Have you been designated by IC System, 19 Incorporated to testify on that subject?</p> <p>20 A. Yes.</p> <p>21 Q. Same questions as to topic two. Let's take 22 a minute.</p> <p>23 A. (Reviews document.)</p> <p>24 Q. Are you competent to testify on that topic?</p> <p>25 A. Yes.</p>	<p style="text-align: center;">8</p> <p>1 A. They're all in the St. Paul office.</p> <p>2 Q. If IC System wants to call a debtor using 3 its dialer, how does it do so?</p> <p>4 A. The list is generated off our host system.</p> <p>5 The phone number would have to be attached 6 to an account that's been placed with IC 7 System, then downloaded to our dialer.</p> <p>8 Q. And you say a list. Would you be referring 9 to, for example, a campaign to collect a 10 list of certain debts?</p> <p>11 A. Yes.</p> <p>12 Q. So would it be accurate to say that someone 13 at IC System either -- someone at IC System 14 decides that a dialling campaign should 15 happen, so they query the database to put 16 together a list of accounts that they went 17 to collect?</p> <p>18 A. Yes. That would be correct.</p> <p>19 Q. Then those accounts are sent to the dialer, 20 and the dialer dials the account; is that 21 right?</p> <p>22 A. Yes.</p> <p>23 Q. How does a dialer decide which accounts to 24 call when?</p> <p>25 A. Well, the dialer can be -- well, you can</p>

<p style="text-align: center;">9</p> <p>1 change or you can select a sort on the 2 dialer to call it in whichever order you 3 wish to call those accounts in.</p> <p>4 Q. Okay. Does the dialer also sometimes decide 5 when to make the phone calls?</p> <p>6 A. If we do not specify a certain order, then 7 yes, it will dial.</p> <p>8 Q. So it would decide what order to dial the 9 phone numbers in?</p> <p>10 A. Yes.</p> <p>11 Q. Do your dialers have capability of 12 intelligently deciding what time of day to 13 call particular dialers -- debtors?</p> <p>14 A. Not necessarily what time of day, but it 15 does not allow to call phone numbers that 16 are not within our legal calling times.</p> <p>17 Q. So my question is -- you know, some people 18 work during the day, some people don't. I 19 would guess that some phone calls, for 20 example, at dinner time are more effective 21 at getting someone to answer than those that 22 are called in the morning on a weekday.</p> <p>23 Does the dialer make any 24 decisions as to what time of day to call 25 people?</p>	<p style="text-align: center;">11</p> <p>1 of time?</p> <p>2 A. Yes.</p> <p>3 Q. So when a person picks up and the dialer 4 decides to leave a message, it plays this 5 message -- the same message to each person 6 who picks up; is that right?</p> <p>7 A. Yes.</p> <p>8 Q. Does it ever happen at IC System that a 9 debtor answers and IC System is able to have 10 a live operator on its end of the call when 11 the dialer calls?</p> <p>12 A. Yes.</p> <p>13 Q. Can you give me some idea of maybe a 14 percentage of calls when there's an operator 15 available to speak to the recipient of a 16 call?</p> <p>17 A. I would say 85 to 90 percent.</p> <p>18 Q. So if there's nobody available at IC System, 19 then it just leaves a prerecorded message; 20 is that right?</p> <p>21 A. Well, we're actually talking about two 22 different types of dialer campaigns.</p> <p>23 Q. Okay. Can you explain the two different 24 kinds, please?</p> <p>25 A. The campaign where we have agents attached</p>
<p style="text-align: center;">10</p> <p>1 A. No, it does not.</p> <p>2 Q. As to the plaintiff's account, do you know 3 whether the campaigns were the type of 4 campaigns where the dialer decided what 5 order to call or whether a human being 6 decided what order to call?</p> <p>7 MR. PEDERSON: Objection to the 8 question, compound. You can answer, Scott.</p> <p>9 THE WITNESS: Can you repeat 10 that, please?</p> <p>11 BY MR. BURKE:</p> <p>12 Q. I'm just trying to figure out as to the 13 plaintiff in this case, Diego Frausto, 14 whether you know whether the calls to Diego 15 were the type of calls where the dialer 16 decided when to call or when -- or the type 17 of calls where the -- where some person 18 decided what order to call him in?</p> <p>19 A. No. I do not know how it was set for that 20 day.</p> <p>21 Q. Would it be accurate to say that sometimes 22 the dialer leaves messages for debtors?</p> <p>23 A. Yes.</p> <p>24 Q. And those messages that the dialer leaves, 25 are those messages that were recorded ahead</p>	<p style="text-align: center;">12</p> <p>1 to -- available to take the calls on a 2 connect, those calls do not leave any 3 automated messages. And then if we choose 4 to run a campaign or job with automated 5 messages, that typically will be all we run, 6 are calls to be -- to leave messages.</p> <p>7 Q. Does it ever happen that IC System uses its 8 dialer to call someone, the person answers, 9 and there's an agent -- an IC System person 10 available and those people speak, and then 11 after they speak a prerecorded message is 12 played?</p> <p>13 A. No.</p> <p>14 Q. When the dialer is making calls, who is 15 dialing the phone numbers? Is it the dialer 16 or a human being or something else?</p> <p>17 A. It's the dialer.</p> <p>18 Q. Does IC System intend to call people using 19 its dialer?</p> <p>20 A. Yes.</p> <p>21 Q. Does IC System intend to call people using 22 its prerecorded messages?</p> <p>23 A. Yes.</p> <p>24 Q. Are there any instances that you can think 25 of where IC System called someone using its</p>

<p style="text-align: center;">13</p> <p>1 dialer but didn't intend to do so? 2 MR. PEDERSON: Objection, calls 3 for speculation, but the witness can answer 4 if he knows. 5 THE WITNESS: No. No. I don't 6 believe so. 7 BY MR. BURKE: 8 Q. Did IC System intend to call Diego Frausto 9 using its dialer? 10 A. Yes. 11 Q. We've been talking about how the dialer 12 works and how the prerecorded messages work. 13 Thinking back over the last three years, in 14 your experience as dialer operations 15 manager, would you say that the dialers have 16 substantially changed such that the answers 17 to these questions might have been 18 different? 19 MR. PEDERSON: Objection to the 20 form of the question. It's vague. The 21 witness can answer to the extent he 22 understands the question. 23 THE WITNESS: No. I don't 24 believe so. 25 BY MR. BURKE:</p>	<p style="text-align: center;">15</p> <p>1 Q. Right. 2 MR. PEDERSON: I'm going to 3 object to the form of the question as vague 4 and lacking foundation, because there's no 5 definition of what a campaign is. Subject 6 to that, the witness can answer. 7 THE WITNESS: Yes. 8 BY MR. BURKE: 9 Q. Can you explain to me what a dialing 10 campaign is, please? 11 A. A dialing campaign is simply a -- what we 12 call a dialer job or a list of accounts that 13 we actually dial on the auto dialer. 14 Q. So would it be accurate to say, then, that 15 sometimes as part of the campaign, the 16 dialer would call a particular number twice? 17 A. If we instruct it to do so. 18 Q. Would it ever call a particular number twice 19 in a campaign where it's the dialer that's 20 deciding who to call when? 21 A. Yes. 22 Q. Is there a certain term that's given to the 23 type of campaign where the dialer is 24 deciding who to call when? 25 A. No, there is not.</p>
<p style="text-align: center;">14</p> <p>1 Q. No, they haven't changed? 2 A. No. 3 MR. PEDERSON: And a related 4 objection is that the witness testified that 5 there are five dialers, and all of these 6 questions have been stated in terms of the 7 dialer. 8 MR. BURKE: Okay. I'll clarify 9 that. 10 BY MR. BURKE: 11 Q. I have been asking about the dialers. Do 12 all the dialers work substantially the same? 13 A. Yes. 14 Q. Okay. So the answers to my questions 15 regarding how you load people's information 16 into the dialers, would those answers be the 17 same for all five dialers? 18 A. Yes. 19 Q. And the intent questions as well, would 20 those be the same for all five dialers? 21 A. Yes. 22 Q. As part of the dialing campaign, will the 23 dialer ever call any particular number more 24 than once? 25 A. Within a dialling campaign?</p>	<p style="text-align: center;">16</p> <p>1 Q. So is it just like a programming designation 2 when the campaign is initiated? 3 A. Yes. 4 Q. Mr. Ellison, is there anyone in the room 5 other than you and the court reporter? 6 A. Yes, there is. 7 Q. Who is in the room? 8 A. Don Fitzgerald. 9 Q. Who is Don Fitzgerald? 10 A. He is IC System's attorney. 11 Q. Have you been communicating with 12 Mr. Fitzgerald at all during this 13 deposition? 14 A. No. 15 MR. PEDERSON: Mr. Fitzgerald is 16 the corporate representative of the 17 defendant. 18 MR. BURKE: You mean as like a 19 corporate representative observer? 20 MR. PEDERSON: Right. 21 MR. BURKE: That's all I have for 22 today on these subjects. 23 MR. PEDERSON: I have a little 24 bit of follow-up. 25</p>

<p style="text-align: center;">17</p> <p>1                   * * *</p> <p>2                   EXAMINATION</p> <p>3                   * * *</p> <p>4                   BY MR. PEDERSON:</p> <p>5                   Q. Mr. Ellison, earlier you testified that in</p> <p>6                   some campaigns the dialer will decide the</p> <p>7                   order in which the phone numbers included in</p> <p>8                   the campaign are dialed; is that correct?</p> <p>9                   A. Yes.</p> <p>10                  Q. And in other campaigns an employee of IC</p> <p>11                  will set the -- will control the order in</p> <p>12                  which the phone numbers included in the</p> <p>13                  campaign are called by the dialer; is that</p> <p>14                  correct?</p> <p>15                  A. That's correct.</p> <p>16                  Q. How often does an IC employee control the</p> <p>17                  order in which the numbers included in the</p> <p>18                  campaign are called?</p> <p>19                  A. It's typical for us to do that. A very high</p> <p>20                  percentage of the campaigns do have a -- the</p> <p>21                  sort set to a certain value that operations</p> <p>22                  may want.</p> <p>23                  Q. In the case of a campaign where the dialer</p> <p>24                  is selecting the order in which the numbers</p> <p>25                  are called, is it true that a human being</p>	<p style="text-align: center;">19</p> <p>1                   with the Telephone Consumer Protection Act?</p> <p>2                   A. Yes.</p> <p>3                   MR. PEDERSON: I don't have</p> <p>4                   anything further.</p> <p>5                   MR. BURKE: I just have a couple</p> <p>6                   on redirect.</p> <p>7                   * * *</p> <p>8                   REDIRECT EXAMINATION</p> <p>9                   * * *</p> <p>10                  BY MR. BURKE:</p> <p>11                  Q. If the dialer calls as part of the campaign</p> <p>12                  where the -- where a person decides what</p> <p>13                  order the calls will be in and nobody</p> <p>14                  answers the phone call, will the dialer try</p> <p>15                  again later?</p> <p>16                  A. The dialer has the ability to do that, but</p> <p>17                  it would depend on how the settings on that</p> <p>18                  campaign are set up.</p> <p>19                  Q. Typically how is that setting set for</p> <p>20                  campaigns?</p> <p>21                  A. Typically we would not call that back within</p> <p>22                  that campaign.</p> <p>23                  MR. BURKE: I think that's all.</p> <p>24                  MR. PEDERSON: Well, we will</p> <p>25                  reserve signature.</p>
<p style="text-align: center;">18</p> <p>1                  employed by IC System will still be</p> <p>2                  responsible for deciding what numbers are</p> <p>3                  included in that campaign in the first</p> <p>4                  place?</p> <p>5                  A. Yes. This is within a campaign that I'm</p> <p>6                  referring to, as far as how the numbers are</p> <p>7                  dialed or the order in which the accounts</p> <p>8                  are dialed.</p> <p>9                  Q. Does a human being employed by IC set the</p> <p>10                 criteria for selecting the numbers that are</p> <p>11                 included in a dialing campaign in the case</p> <p>12                 of all of the company's dialing campaigns?</p> <p>13                 A. Yes.</p> <p>14                 Q. How long does a dialing campaign typically</p> <p>15                 last?</p> <p>16                 A. We don't really have a typical time frame.</p> <p>17                 We have some very small campaigns, and we</p> <p>18                 have some very large campaigns. Some will</p> <p>19                 last a half hour. We have others that will</p> <p>20                 last the entire workday.</p> <p>21                 Q. Will they ever last longer than a day?</p> <p>22                 A. No, they cannot. We rebuild our list each</p> <p>23                 night.</p> <p>24                 Q. When IC System uses its dialing technology</p> <p>25                 to call people, does it intend to comply</p>	<p style="text-align: center;">20</p> <p>1                  MR. BURKE: So we're off the</p> <p>2                  record.</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

21

1 SIGNATURE PAGE

2  
3 CASE: DIEGO FRAUSTO vs. IC SYSTEM, INC.,  
4 DATE OF DEPOSITION: January 14, 2011  
5 I, SCOTT ELLISON, deponent,  
6 certify that I have read the foregoing  
7 transcript of my testimony and have made the  
8 following corrections and/or changes and the  
9 reason why:  
PAGE: LINE: CHANGE:  
10  
11  
12  
13  
14  
15  
16  
17

18 SCOTT ELLISON

19 AFFIX SEAL NOTARY PUBLIC

20 Dated this \_\_\_\_\_ day  
21 of \_\_\_\_\_, 20\_\_\_\_\_.  
22

23 Please return to:

24 Laurie A. Kjeldsen  
5171 St. Albans Street North  
Shoreview, Minnesota 55126  
25

22

1 STATE OF MINNESOTA )

2 COUNTY OF RAMSEY )

3 Be it known that I took the  
4 deposition of SCOTT ELLISON on January 14,  
5 2011;

6 That I was then and there a  
7 notary public in and for the County of  
8 Ramsey, State of Minnesota, and that by  
9 virtue thereof I was duly authorized to  
administer an oath;

10 That the witness before  
testifying was by me first duly sworn to  
11 testify the whole truth and nothing but the  
truth relative to said cause;

12 That the testimony of said  
witness was recorded in stenotype by myself  
and transcribed into typewriting under my  
13 direction, and that the deposition is a true  
record of the testimony given by the witness  
14 to the best of my ability;

15 That I am not related to any  
of the parties hereto nor interested in the  
16 outcome of the action;

17 That the reading and signing  
by the witness and Notice of Filing were not  
18 waived;  
19

20 Witness my hand and seal this  
21 20th day of January, 2011.  
22

23 LAURIE A. KJELDEN  
24 COURT REPORTER  
25

# Exhibit D

Page 1	Page 3														
<p>IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION DIEGO FRAUSTO, ) Plaintiff, ) vs. ) No. 10-cv-1363 IC SYSTEM, INC., ) Judge Zagel Defendant. )</p> <p>The deposition of DIEGO IVAN FRAUSTO, called for examination pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before BRENDA S. TANNEHILL, a notary public within and for the County of Kane and State of Illinois, at 222 North LaSalle Street, Suite 300, Chicago, Illinois, on January 18, 2011 at the hour of 1:41 o'clock p.m.</p>	<p style="text-align: center;">I N D E X</p> <p>1 WITNESS EXAMINATION 2 DIEGO IVAN FRAUSTO 3 By Mr. Pederson 5 4 By Mr. Burke 39 5 Further Examination 6 By Mr. Pederson 42 7 8 9 10</p> <p style="text-align: center;">E X H I B I T S</p> <table> <thead> <tr> <th style="text-align: left;">NUMBER</th><th style="text-align: right;">MARKED FOR ID</th></tr> </thead> <tbody> <tr> <td>Frausto Deposition Exhibit</td><td></td></tr> <tr> <td>14 No. 1 11</td><td></td></tr> <tr> <td>15 No. 2 18</td><td></td></tr> <tr> <td>16 No. 3 23</td><td></td></tr> <tr> <td>17 No. 4 25</td><td></td></tr> <tr> <td>18 No. 5 28</td><td></td></tr> </tbody> </table> <p>19 20 21 22</p>	NUMBER	MARKED FOR ID	Frausto Deposition Exhibit		14 No. 1 11		15 No. 2 18		16 No. 3 23		17 No. 4 25		18 No. 5 28	
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<p>REPORTED BY: Brenda S. Tannehill, CSR, RPR, CRR LICENSE NO. 084-003336</p>	<p>23 24</p>														
Page 2	Page 4														
<p>1 APPEARANCES: 2 BURKE LAW OFFICES, LLC 3 BY MR. ALEXANDER H. BURKE 4 155 North Michigan Avenue, Suite 9020 5 Chicago, Illinois 60601 6 (312) 729-5288 7 Aburke@BurkeLawLLC.com 8 Representing the Plaintiff;</p> <p>10 HINSHAW &amp; CULBERTSON, LLP 11 BY MR. PETER E. PEDERSON 12 222 North LaSalle Street, Suite 300 13 Chicago, Illinois 60601 14 (312) 704-3000 15 ppederson@hinshawlaw.com 16 Representing the Defendant.</p>	<p>1 (Whereupon, the witness was 2 duly sworn.) 3 MR. PEDERSON: Mr. Frausto, please 4 state your full name for the record. 5 THE WITNESS: Diego Ivan Frausto. 6 MR. PEDERSON: Let the record reflect 7 that this is the deposition of Diego Frausto in 8 the action entitled Diego Frausto versus IC 9 System, Inc. which is pending in the U.S. 10 District Court for the Northern District of 11 Illinois. 12 Thank you for coming in today, 13 Mr. Frausto. 14 My name is Pete Pederson, and I 15 represent the defendant, IC System, in your 16 lawsuit, and I'm going to ask you a series of 17 questions about the lawsuit. Before we get into 18 the details, let me just go over a couple of 19 preliminaries. 20 DIEGO IVAN FRAUSTO, 21 called as a witness herein, having been first 22 duly sworn, was examined and testified as 23 follows:</p>														

<p style="text-align: right;">Page 5</p> <p>1                   EXAMINATION    2 BY MR. PEDERSON:    3    Q. First of all, do you have any medical    4 condition that would interfere with your ability    5 to testify truthfully today?    6    A. No.    7    Q. Have you taken any medication or drugs    8 that would interfere with your ability to    9 testify truthfully?    10   A. No.    11   Q. Okay. Have you ever given a deposition    12 before?    13   A. No.    14   Q. Okay. As you can see, the court    15 reporter is typing or transcribing a copy of all    16 of my questions and all of your answers. So    17 that she can take down the words we're saying    18 accurately, only one of us can speak at a time    19 so let me complete my questions before you begin    20 your answers so that we have an accurate    21 transcript even when you know where I'm going to    22 go with a question, which will probably happen a    23 couple of times today.    24    Also, because of the court reporter</p>	<p style="text-align: right;">Page 7</p> <p>1    Q. So are you a junior then?    2    A. Uh-huh, yes.    3    Q. Are you currently employed?    4    A. Yes.    5    Q. Who is your employer?    6    A. Rosetta Stone, LTD.    7    Q. And what is Rosetta Stone?    8    A. A language software company.    9    Q. And where are you employed for Rosetta    10 Stone?    11   A. The retail division so I work here on    12 Michigan Avenue at a kiosk selling the program.    13   Q. Okay. And what is the location of the    14 kiosk?    15   A. It's [REDACTED].    16   Q. Is that inside a mall?    17   A. Yes.    18   Q. And what's your title at Rosetta Stone?    19   A. Sales associate.    20    MR. BURKE: Pete, for the birthday and    21 the address information, we'd ask that that    22 stuff be redacted if the transcript is filed.    23    MR. PEDERSON: Fair enough.</p>
<p style="text-align: right;">Page 6</p> <p>1 making the transcript, your answers have to be    2 verbal, they can't be in the form of body    3 language or shrugs of the shoulder or nods of    4 the head or shaking of the head.    5    And last, we can take a break whenever    6 you want to, but I do ask that you answer any    7 question that is pending before we go on break.    8    What is your date of birth?    9    A. [REDACTED]    10   Q. [REDACTED]    11   A. Uh-huh.    12   Q. And what is your residence address?    13   A. [REDACTED]    14   [REDACTED]    15   Q. What's the highest level of education    16 you've completed?    17   A. I'm currently in college, university.    18   Q. Okay. What college are you going to?    19   A. Loyola University.    20   Q. What are you studying there?    21   A. International business.    22   Q. And how close to completing the degree    23 are you?    24   A. Three semesters away.</p>	<p style="text-align: right;">Page 8</p> <p>1    BY MR. PEDERSON:    2    Q. Did you also complete your high school    3 degree?    4    A. Yes.    5    Q. Where did you go to high school?    6    A. I went three years in France and then    7 one year in Buffalo Grove High School.    8    Q. And where did you obtain your high    9 school diploma?    10   A. [REDACTED]    11   Q. And what year was that?    12   A. 2007, I think.    13   Q. Have you ever been a party to any other    14 legal proceedings either as a defendant or a    15 plaintiff?    16   A. Yes, I am now currently.    17   Q. Beyond this suit, have you been    18 involved as a plaintiff or a defendant in any    19 other lawsuits?    20   A. Yes.    21   Q. Okay. What are those other suits?    22   A. There's one. Again, it's a restaurant    23 that showed the expiration date on my receipt.    24   Q. And who represents you in that case?</p>

2 (Pages 5 to 8)

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1 A. I can't recall the name of the lawyer.  
 2 Q. Is it Brian Vanca?  
 3 A. I can't recall.  
 4 Q. What's the current status of that  
 5 lawsuit?  
 6 A. Pending.  
 7 Q. All right. When was it filed?  
 8 A. I can't recall.  
 9 Q. Do you know, is there a trial date in  
 10 the lawsuit?  
 11 A. Not yet.  
 12 Q. Has the class been certified?  
 13 A. I don't know.  
 14 Q. Is it possible that this case was  
 15 decided in the district court and then went up  
 16 to the Seventh Circuit Court of Appeals?  
 17 A. No. The one we're talking about,  
 18 right?  
 19 Q. Yeah.  
 20 A. No.  
 21 Q. So it's still in the district court?  
 22 A. I'm not sure. I believe so.  
 23 Q. Who is the defendant in that suit?  
 24 A. Ripple, R-I-P-P-L-E.

1 Q. Have you been a plaintiff or a  
 2 defendant in any other lawsuits besides the case  
 3 against Ripple and the current lawsuit?  
 4 A. No.  
 5 Q. So you've only been a party to two  
 6 lawsuits then?  
 7 A. Yes.  
 8 Q. Is the allegation you have made in the  
 9 Ripple lawsuit that the restaurant violated the  
 10 Fair Credit Reporting Act by printing more than  
 11 the last five digits of your credit card on a  
 12 paper receipt?  
 13 A. Correct.  
 14 Q. And was it a paper receipt involved in  
 15 that case?  
 16 A. Yes.  
 17 Q. Have you ever filed for bankruptcy  
 18 protection?  
 19 A. No.  
 20 Q. I served on your counsel, Mr. Burke, a  
 21 set of questions that are called  
 22 interrogatories, and in one of those  
 23 interrogatories -- did you assist Mr. Burke in  
 24 responding to the interrogatories?

1 A. Yes.  
 2 Q. In one of the interrogatory questions,  
 3 we asked whether you were a party in any other  
 4 litigation. Do you recall answering that  
 5 question?  
 6 A. I don't recall.  
 7 Q. Well, let me just mark the  
 8 interrogatories as an exhibit.  
 9 MR. PEDERSON: Will you mark this as  
 10 Exhibit 1, please?  
 11 (Whereupon, Frausto Deposition  
 12 Exhibit No. 1 was marked for  
 13 identification.)  
 14 BY MR. PEDERSON:  
 15 Q. Please take a minute, Mr. Frausto, and  
 16 take a look at what's been marked as Exhibit  
 17 No. 1, and then I want to ask you in particular  
 18 about your response to Question Number 9 in  
 19 Exhibit 1.  
 20 Have you ever seen this document  
 21 before, Mr. Frausto?  
 22 A. I believe I have.  
 23 Q. Would you turn your attention to the  
 24 last page, to Page 9? It says, "Certification

1 of Diego Frausto" at the top.  
 2 A. Uh-huh.  
 3 Q. Is that your signature?  
 4 A. Yes.  
 5 Q. And did you sign this document for the  
 6 purpose of verifying that the interrogatory  
 7 answers were correct?  
 8 A. Correct.  
 9 Q. Question Number 9 asked if you've been  
 10 a party to any other lawsuits, and the answer  
 11 is, quote, "Plaintiff is not aware of having  
 12 been a party to any other lawsuit," close quote.  
 13 Do you see that?  
 14 A. Yes.  
 15 Q. Why didn't you disclose the Fair Credit  
 16 Reporting Act case against the restaurant in  
 17 response to this question?  
 18 A. I had probably forgotten.  
 19 Q. Okay. And what jogs your memory about  
 20 this lawsuit?  
 21 A. Because I recently received an e-mail  
 22 relating to that so that's fresh in my mind.  
 23 Q. Okay. Do you know approximately how  
 24 long ago that lawsuit was filed?

1 A. I can't remember.  
 2 Q. Okay.  
 3 MR. BURKE: Can I take just a minute  
 4 with Diego?  
 5 MR. PEDERSON: Yeah.  
 6 (Whereupon, a short recess  
 7 was taken.)  
 8 MR. PEDERSON: Back on the record.  
 9 BY MR. PEDERSON:  
 10 Q. Do you have a cell phone number,  
 11 Mr. Frausto?  
 12 A. Yes.  
 13 Q. What is your cell phone number?  
 14 A. [REDACTED] 7867.  
 15 Q. What company provides the phone service  
 16 associated with that number?  
 17 A. T-Mobile.  
 18 Q. How long have you had the phone number  
 19 [REDACTED] 7867?  
 20 A. I can't recall how long, but I can give  
 21 an estimate.  
 22 Q. Okay.  
 23 A. Like 2006.  
 24 Q. Has the number [REDACTED] 7867 always

1 been assigned to a cell phone?  
 2 A. I believe so.  
 3 Q. Okay. I mean, you know numbers can be  
 4 ported, right?  
 5 A. Yeah.  
 6 Q. And to your knowledge, has that number  
 7 ever been ported from a landline to a cell phone  
 8 or vice versa?  
 9 A. No. I believe it's always been a cell  
 10 phone.  
 11 Q. And are you the primary user of that  
 12 number?  
 13 A. Yes.  
 14 Q. Are you the only user of that number?  
 15 A. Yes.  
 16 Q. Have you always been the sole user of  
 17 that number?  
 18 A. Yes.  
 19 Q. Okay. Do you have any other phone  
 20 numbers where you can be reached at?  
 21 A. Yes.  
 22 Q. Okay. What are the other numbers?  
 23 A. My house phone.  
 24 Q. Is that a wired line or a landline?

1 A. It's a landline.  
 2 Q. And what is that number?  
 3 A. [REDACTED] 9946.  
 4 Q. And do you share that number with other  
 5 people?  
 6 A. Not really.  
 7 Q. So that is also your exclusive number?  
 8 A. It's my house number where I live with  
 9 my family so it's our family number.  
 10 Q. Well, who do you live with in your  
 11 house?  
 12 A. My parents.  
 13 Q. So they use it?  
 14 A. Yes.  
 15 Q. Does anyone else use it?  
 16 A. My sisters, the family.  
 17 Q. Is it fair to say that the cell phone  
 18 number ending with the digits 7867 is your  
 19 primary phone number?  
 20 A. Yes.  
 21 Q. When you open an account with a  
 22 merchant and the merchant requires you to  
 23 provide a contact number, do you typically  
 24 provide the cell phone number ending in 7867?

1 A. Most of the time, yes.  
 2 Q. You had an account with PayPal,  
 3 correct?  
 4 A. Correct.  
 5 Q. When did you open the PayPal account?  
 6 A. Again, I can't recall exactly when, but  
 7 probably 2007, 2008.  
 8 Q. And how did you open your PayPal  
 9 account?  
 10 A. Online.  
 11 Q. So did you use your web browser to  
 12 access the PayPal website?  
 13 A. Yes.  
 14 Q. And did you fill out some information  
 15 forms through your web browser?  
 16 A. You mean like input the -- yes.  
 17 Q. And did you give PayPal the cell phone  
 18 number ending with the four digits 7867?  
 19 A. I can't remember if I gave them that  
 20 number.  
 21 Q. Did you give them any phone number?  
 22 A. I'm not sure.  
 23 Q. What information did you provide to  
 24 PayPal when you opened the account?

1 A. I don't remember. It was a while ago.  
 2 Q. Okay. When you opened your account,  
 3 were you asked to agree to the terms of the  
 4 PayPal user agreement?  
 5 A. I believe I was.  
 6 Q. Okay. And did you agree to the terms  
 7 of the PayPal user agreement?  
 8 A. Yes.  
 9 Q. Did you review the user agreement  
 10 before you indicated your agreement to the  
 11 terms?  
 12 A. Like read through?  
 13 Q. Yeah.  
 14 A. Yeah.  
 15 Q. You did?  
 16 A. Yes.  
 17 Q. Okay. And how did you indicate your  
 18 agreement to the terms of the user agreement?  
 19 A. How did I indicate that I read it?  
 20 Q. And that you accepted the terms.  
 21 A. I can't remember, but I most likely  
 22 clicked on "Accept terms."  
 23 Q. Okay. Did you ever save or print a  
 24 copy of the user agreement?

1 A. No.  
 2 Q. So you don't have like a PDF copy or  
 3 other Word type document or file on your  
 4 computer that would contain the terms of the  
 5 agreement you agreed to?  
 6 A. Correct, I don't.  
 7 MR. PEDERSON: Please mark this as  
 8 Exhibit 2.  
 9 (Whereupon, Frausto Deposition  
 10 Exhibit No. 2 was marked for  
 11 identification.)  
 12 BY MR. PEDERSON:  
 13 Q. Please turn to Exhibit A in the  
 14 document that's been marked as Deposition  
 15 Exhibit 2 and take a moment to review the  
 16 document. Exhibit A is about ten pages in.  
 17 It's a 34-page-long user agreement.  
 18 Is Exhibit A within Deposition Exhibit  
 19 No. 2 a copy of the user agreement with PayPal  
 20 that you would have agreed to at the time you  
 21 opened your PayPal account?  
 22 A. I don't know. I mean, it's 34 pages so  
 23 I can't recall.  
 24 Q. Let me ask you this. Do you know

1 whether the PayPal user agreement stated that  
 2 PayPal could contact you at the phone number you  
 3 provided using autodial with prerecorded message  
 4 calls?  
 5 A. Yes, PayPal could contact me.  
 6 Q. And you recall that the agreement  
 7 included a provision to that effect; is that  
 8 correct?  
 9 A. Yes, that PayPal could contact me at  
 10 the number.  
 11 Q. Okay. What did the user agreement say  
 12 about how PayPal would share your personal  
 13 information with other companies or people?  
 14 A. I can't recall that.  
 15 Q. Okay. At any time did you review  
 16 PayPal's privacy policy?  
 17 A. Yes, but I can't remember. I mean,  
 18 it's been a while.  
 19 Q. Okay. When would you have reviewed  
 20 PayPal's privacy policy?  
 21 A. Well, it's in the user agreement I  
 22 would have agreed to.  
 23 Q. It's linked from the user agreement?  
 24 A. Then that would be the time I saw it.

1 Q. So are you indicating then that you  
 2 would have reviewed the privacy policy at the  
 3 same time you reviewed the user agreement?  
 4 A. If the privacy policy is in here, then  
 5 yes.  
 6 Q. It's a hypertext link to the PayPal --  
 7 or from the PayPal user agreement.  
 8 A. Yes, I would have reviewed it then.  
 9 Q. Okay. Did you ever print or save a  
 10 copy of the PayPal privacy policy?  
 11 A. No.  
 12 Q. Please take a look at the document  
 13 which is marked Exhibit B within Deposition  
 14 Exhibit No. 1. That's like the last five  
 15 pages -- I'm sorry. It's Exhibit B within  
 16 Deposition Exhibit No. 2 which is around the  
 17 last five pages of Deposition Exhibit No. 2.  
 18 Is Exhibit B a copy of the PayPal  
 19 privacy policy that you reviewed at the time you  
 20 opened your PayPal account?  
 21 A. Yeah, I can't remember if this is the  
 22 exact one word for word.  
 23 Q. Okay. Well, let me ask you this then.  
 24 Do you recall whether the PayPal

1 privacy policy stated that PayPal would use your  
 2 personal information to resolve disputes and  
 3 collect fees?

4 A. That is correct.

5 Q. Okay. And do you recall whether the  
 6 PayPal privacy policy stated that PayPal would  
 7 use your personal information to enforce the  
 8 terms of the user agreement?

9 A. I can't remember.

10 Q. Did the privacy policy state that  
 11 PayPal could share your personal information  
 12 with service providers who provided help with  
 13 bill collection?

14 A. Again, I can't remember if I read that.

15 Q. What is the current status of your  
 16 PayPal account?

17 A. I believe it's been closed.

18 Q. Okay. And why was it closed?

19 A. There was a dispute with -- I used  
 20 eBay, which I would use PayPal as the payment,  
 21 and there was a dispute with eBay for something  
 22 I had sold online.

23 Q. Okay. So you used your PayPal account  
 24 to process transactions, to process payments for

1 transactions on eBay?

2 A. Correct.

3 Q. Did you use your PayPal account for any  
 4 other purposes?

5 A. No. Solely for eBay.

6 Q. Okay. In May of 2009, did you have  
 7 occasion to sell a handbag to [REDACTED] through  
 8 eBay?

9 A. Yes, that is correct, I sold him the  
 10 bag.

11 MR. PEDERSON: Please mark this as  
 12 Exhibit 3.

13 MR. BURKE: We'd ask that all  
 14 identifying information of [REDACTED] including  
 15 his name please be redacted.

16 MR. PEDERSON: Okay. Well, I'm not  
 17 sure that that's properly subject to the  
 18 protective order. It's something we can  
 19 probably work out, but we don't need to resolve  
 20 it now. If you're designating it as  
 21 confidential, then it's confidential.

22 MR. BURKE: We'll designate it as  
 23 confidential, and then you and I can discuss it  
 24 offline.

1 (Whereupon, Frausto Deposition  
 2 Exhibit No. 3 was marked for  
 3 identification.)

4 BY MR. PEDERSON:

5 Q. Here's a copy of what's been marked  
 6 Deposition Exhibit No. 3. Please take a second  
 7 and review the e-mails printed on Deposition  
 8 Exhibit No. 3.

9 Are the e-mails on Deposition Exhibit  
 10 No. 3 e-mails concerning the sale of the handbag  
 11 to [REDACTED]

12 A. That is correct.

13 Q. Okay. Tell me generally what the terms  
 14 of the transaction between you and Mr. [REDACTED]  
 15 were.

16 A. Well, I sold him the product. He had  
 17 seen pictures of it online. I sent the product  
 18 after I received payment, and he claimed the  
 19 product was damaged, which it was not.

20 He then tried to return the bag, and I  
 21 offered to -- I offered to give him most of the  
 22 money back minus a 20 percent restocking fee  
 23 because the bag was not damaged.

24 When I sold it through eBay, I did not

1 click "Accept returns."

2 He refused, and he went through -- I'm  
 3 not sure if it was PayPal or eBay who does the  
 4 dispute. I think it was eBay -- or sorry --  
 5 PayPal. And PayPal ruled against me.

6 And when I received the product, the  
 7 bag was damaged, and that's not how I sent it so  
 8 I thought that I should not be responsible for  
 9 that money.

10 Q. Okay. You used the term "restocking  
 11 fee."

12 A. Yes.

13 Q. What do you mean by a restocking fee?

14 A. My time in terms of packing and driving  
 15 to the post office and all that. The hassle, I  
 16 guess.

17 Q. Okay. What was the --

18 A. I didn't have to accept the return. He  
 19 knew it was a final sale. That was me trying to  
 20 work with him.

21 Q. What was the price that Mr. [REDACTED] paid  
 22 for the bag?

23 A. Over 200. I don't remember exactly the  
 24 dollar amount.

1 Q. Okay. And was the buyer's payment  
2 processed through PayPal?

3 A. Yes.

4 Q. And so the purchase price was  
5 transferred to your PayPal account; is that  
6 correct?

7 A. Yes.

8 Q. Okay.

9 A. Minus the fees from PayPal.

10 Q. Do you remember what fees PayPal  
11 charged?

12 A. I can't recall.

13 MR. PEDERSON: I've got to step out to  
14 get a stapler. I'll be right back.

15 (Whereupon, a short recess  
16 was taken.)

17 MR. PEDERSON: Please mark this as the  
18 next exhibit.

19 (Whereupon, Frausto Deposition  
20 Exhibit No. 4 was marked for  
21 identification.)

22 BY MR. PEDERSON:

23 Q. Please take a look at the page that's  
24 marked Frausto 16 in the lower right corner.

1 Do you see that this document  
2 references a transaction amount of \$254.41?

3 A. Correct.

4 Q. And then below that, it references a  
5 refund amount of \$243?

6 A. Yes.

7 Q. And this is a July 24th, 2009, e-mail  
8 from service@paypal.com to  
9 frausto1988@yahoo.com?

10 A. Yes.

11 Q. Is [REDACTED] your e-mail  
12 address?

13 A. Yes, one of my e-mail addresses.

14 Q. Okay. Is that the e-mail address you  
15 provided to Pay Pal?

16 A. Yes.

17 Q. I'm trying to understand the terms of  
18 the transaction. Does this document indicate  
19 that the purchase price was \$254.41?

20 A. Yes. That is -- I'm not exactly sure,  
21 I can't remember, but based on this, that is  
22 what I would imagine. I would imagine the 243  
23 below that is after they took their fees.

24 Q. Okay. And the beginning of the e-mail

1 says, quote, "We have completed our  
2 investigation and have decided in favor of the  
3 buyer," close quote.

4 Do you see that in the first paragraph?

5 A. Yes, I see it.

6 Q. So is it your understanding that PayPal  
7 issued a refund to the buyer in the amount of  
8 \$243?

9 A. Well, it says, "Affirm your PayPal  
10 account --

11 THE COURT: Affirm your?

12 MR. BURKE: Speak slowly so she can get  
13 it.

14 THE WITNESS: Can you ask it again?

15 BY MR. PEDERSON:

16 Q. Yeah.

17 Is it your understanding that PayPal  
18 issued a refund to the buyer in the amount of  
19 \$243?

20 A. I'm not sure if it was 243 or 254.41.

21 Q. Okay.

22 A. I don't know what he got. I know that  
23 he was issued a refund.

24 Q. Okay. Did PayPal apply a debit to your

1 account?

2 A. Again, you mean they took that money  
3 out of my account?

4 Q. Out of your PayPal account.

5 A. Yes, yes. I ended up being in the  
6 negative with PayPal.

7 Q. Okay. And what was the negative  
8 balance of your account with PayPal?

9 A. I can't remember now.

10 Q. Was it around \$240?

11 A. It was, yeah, correct.

12 Q. Okay. Did you ever pay any part of the  
13 negative balance on your PayPal account arising  
14 from this dispute with the buyer?

15 A. No.

16 MR. PEDERSON: Would you mark this as  
17 Exhibit No. 5?

18 (Whereupon, Frausto Deposition  
19 Exhibit No. 5 was marked for  
20 identification.)

21 BY MR. PEDERSON:

22 Q. Can you tell me, Mr. Frausto, in your  
23 own words what the document marked as Deposition  
24 Exhibit 5 represents?

1 A. eBay seller fees so I had used my eBay  
 2 account to sell items, and I was paying eBay for  
 3 the seller fees.

4 Q. And what transactions or transaction  
 5 resulted in you owing these fees to eBay?

6 A. I can't recall because I have sold  
 7 several things on eBay or I did sell several  
 8 things on eBay so I'm not sure if this results  
 9 from this sale or from prior sales before.

10 Q. Okay. But it's possible, though, that  
 11 you paid these fees to eBay in connection with  
 12 the sale of the handbag that the buyer disputed?

13 A. That is correct.

14 Q. And this is an August 4th, 2009,  
 15 electronic receipt issued by eBay showing a  
 16 payment by you, Diego Frausto, of 24.95,  
 17 correct?

18 A. Correct.

19 Q. And this receipt was issued by eBay  
 20 after PayPal decided the buyer's dispute in  
 21 favor of the buyer, correct?

22 A. Let me look at the date.

23 Correct.

24 Q. What is your understanding of the

1 recollection.

2 A. They called me, they informed me that  
 3 they were trying to collect a debt.

4 I spoke to a representative. I don't  
 5 remember her name. I do remember her saying  
 6 that -- I do remember telling her that I did not  
 7 have money at the moment to pay that debt and  
 8 that I did not feel I needed to pay the debt  
 9 because I didn't feel it was a valid debt.

10 She said that I should try to get a  
 11 family member to lend me money so I could repay  
 12 that money.

13 And I hung up. I don't remember if  
 14 I -- I mean, there was probably like, you know,  
 15 "Thank you" or whatever, and then I hung up.

16 Q. So did you have only one live  
 17 conversation with an IC representative?

18 A. That is correct.

19 Q. And when did that conversation take  
 20 place?

21 A. I don't remember the date.

22 Q. Was it in August or September of 2009?

23 A. Yeah, it was probably in August or  
 24 September.

1 relationship between the defendant in this case,  
 2 IC System, and PayPal?

3 A. I gave my number to PayPal, and my  
 4 understanding of the agreement was that PayPal,  
 5 PayPal alone, could contact me via phone using  
 6 the robo calls. That's my understanding. So, I  
 7 mean, I agreed to something that PayPal could  
 8 contact me, nobody else, with that, with those  
 9 robo calls.

10 Q. And by "robo calls," what do you mean?

11 A. An automated dialer.

12 Q. Calls made with an automated dialer?

13 A. Yes, correct.

14 Q. In your own words, what is the  
 15 relationship between IC System and PayPal? What  
 16 service was IC System providing for PayPal?

17 A. They were collecting debt for PayPal.

18 Q. Is it fair to say in your understanding  
 19 that they were attempting to collect the amount  
 20 you allegedly owed PayPal as a result of this  
 21 transaction involving the handbag?

22 A. Yes.

23 Q. Okay. Please describe all of your  
 24 contacts with IC System to the best of your

1 Q. And so this would have been just a few  
 2 weeks after PayPal decided the dispute with the  
 3 buyer in favor of the buyer?

4 A. Yes.

5 Q. Okay. And you received correspondence  
 6 from -- did you receive collection letters from  
 7 IC?

8 A. I received one -- yeah, I letter from  
 9 IC System.

10 Q. Did you keep a copy of any letters you  
 11 received from IC?

12 A. Yeah, I kept a copy of the letter I  
 13 received from IC System, yes.

14 Q. And did you give any letters you  
 15 received from IC System to your lawyer in this  
 16 case so that they could be produced in this  
 17 litigation?

18 A. Yes.

19 MR. BURKE: If that hasn't been  
 20 produced, I'll go back through the stuff. I  
 21 don't remember if I produced it or not.

22 MR. PEDERSON: No, you produced a  
 23 letter. I just want to make sure I have all the  
 24 correspondence.

1 MR. BURKE: All right.  
 2 THE WITNESS: To what I remember, there  
 3 was just one letter they sent me.  
 4 BY MR. PEDERSON:  
 5 Q. Okay. And you had only the one phone  
 6 conversation you've already described?  
 7 A. Yes.  
 8 Q. Are you aware of any other phone calls  
 9 made by IC to you?  
 10 A. Yeah. There were several. There were  
 11 many calls made to me from IC System. I never  
 12 picked up to speak to them.  
 13 Q. And how did you know it was IC?  
 14 A. Well, the number came up, and I looked  
 15 them up, and they were IC System.  
 16 Q. So you screened the calls then?  
 17 A. You mean I would see the number and not  
 18 pick up? Correct.  
 19 And I also sent them a letter.  
 20 Q. And what did you say in the letter?  
 21 A. That I did not recognize the debt, and  
 22 I asked them to please stop calling me.  
 23 Q. Did you receive any automated or  
 24 prerecorded voice messages from IC on your

1 voicemail?  
 2 A. Yes.  
 3 Q. Do you know how many?  
 4 A. I have a copy of one. Yeah, I have a  
 5 copy of one, but I know they called me more than  
 6 once.  
 7 Q. And what did you do with the -- and did  
 8 they leave messages on those other occasions?  
 9 A. I don't remember.  
 10 Q. What number did IC call you at?  
 11 A. My cell phone number.  
 12 Q. Ending in --  
 13 A. 67.  
 14 Q. The number ending with 7867?  
 15 A. Yes.  
 16 Q. Did they call you at any other number?  
 17 A. No.  
 18 Q. Is it your understanding that you have  
 19 filed a complaint in this lawsuit alleging that  
 20 IC System violated the Telephone Consumer  
 21 Protection Act?  
 22 A. Yes.  
 23 Q. Okay. And is it all right with you if  
 24 I refer to that statute as the TCPA?

1 A. Correct, yes.  
 2 Q. In your own words, how did IC violate  
 3 the TCPA?  
 4 A. They left a message and did not state  
 5 what the purpose of the call was and who they  
 6 were.  
 7 Q. Okay. Did they violate the TCPA in any  
 8 other way?  
 9 A. I'm not sure.  
 10 Q. Okay.  
 11 MR. PEDERSON: I am close to being  
 12 finished. I need to look at my notes.  
 13 MR. BURKE: Okay.  
 14 MR. PEDERSON: Let me take a gander at  
 15 my notes.  
 16 MR. BURKE: I might have some redirect.  
 17 MR. PEDERSON: Okay.  
 18 (Whereupon, a short recess  
 19 was taken.)  
 20 MR. PEDERSON: Back on the record.  
 21 BY MR. PEDERSON:  
 22 Q. I have just a little bit of follow-up.  
 23 How did you come to retain Mr. Burke as  
 24 your lawyer in this lawsuit?

1 A. I was referred by somebody.  
 2 Q. Okay. Who referred you?  
 3 A. Someone named Nicholas Martin.  
 4 Q. And who is that?  
 5 A. A friend of mine.  
 6 Q. Okay. And what is the relationship  
 7 between Nicholas Martin and Mr. Burke?  
 8 A. Client-attorney.  
 9 Q. Okay. And did you contact Mr. Burke --  
 10 I don't want -- I'm not asking you to disclose  
 11 any communications you had with Mr. Burke as  
 12 your counsel or any advice he provided you, but  
 13 I'm entitled to ask you about the general  
 14 subject matter of conversations and also  
 15 conversations before the attorney-client  
 16 relationship existed. And so my question to you  
 17 is: Did you approach Mr. Burke, or did he  
 18 approach you?  
 19 MR. BURKE: Hold on.  
 20 What relevance does this have if we're  
 21 not doing class certification issues in this  
 22 deposition?  
 23 MR. PEDERSON: Well, I think it's just  
 24 general background, and I only have like one or

1 two questions.

2 MR. BURKE: How is it possibly going to  
3 lead to the discovery of admissible evidence?

4 MR. PEDERSON: Because it's just  
5 general background.

6 MR. BURKE: But you're done with the  
7 deposition.

8 MR. PEDERSON: No. I have a few more  
9 questions. I mean, I've gone for barely over an  
10 hour. I have seven hours under the rules. I'm  
11 using less than a seventh of that time.

12 MR. BURKE: I think this stuff relates  
13 to class certification, if anything at all, but  
14 go ahead and answer.

15 I don't think that this is appropriate,  
16 given your contention that class certification  
17 in discovery is stayed, which I don't think is  
18 what's going on here, but if you're going to go  
19 into class certification discovery, I think that  
20 we're prepared to do that, but if you're not  
21 going to go into class certification discovery,  
22 I think that you are not entitled to ask these  
23 questions. These are not questions that are  
24 appropriate in a regular deposition in an

1 MR. BURKE: And I object to that. I  
2 think that we should just do this in one shot,  
3 but I understand defense counsel has a different  
4 understanding of what the Court has ordered.

5 EXAMINATION

6 BY MR. BURKE:

7 Q. Diego, a couple of questions. I want  
8 to clarify a couple of things.

9 Do you or do you not remember if you  
10 gave your cell phone number to PayPal?

11 A. I'm not entirely sure I gave my cell  
12 phone number.

13 Q. So it would be accurate to say that you  
14 do not remember?

15 A. Correct.

16 Q. And you testified in your deposition  
17 about who could contact you using an autodialer,  
18 PayPal or someone else, and at the time, you  
19 were referencing a contract that Mr. Pederson  
20 showed you in Exhibit 2.

21 Do you remember those questions?

22 A. Yes.

23 Q. Okay. I think you testified that  
24 Exhibit A to Exhibit 2, that you didn't remember

1 individual case.

2 MR. PEDERSON: Are you instructing the  
3 witness not to answer?

4 MR. BURKE: Would you ask the question  
5 again, and I'll think about it?

6 BY MR. PEDERSON:

7 Q. Did you seek out an attorney-client  
8 relationship with Mr. Burke in connection with a  
9 possible claim against IC System, the claim  
10 asserted in this lawsuit?

11 A. Yes.

12 Q. Okay. And did you approach Mr. Burke,  
13 or did he approach you?

14 A. I approached him.

15 MR. PEDERSON: Okay. Subject to  
16 recross following your redirect, I do not have  
17 further questions at this point concerning the  
18 merits of the case, however, it is defendant's  
19 position that class discovery has been stayed,  
20 and should the case proceed beyond briefing on  
21 the motions for summary judgment, then defendant  
22 reserves the right to resume the deposition of  
23 Mr. Frausto with respect to the class  
24 certification issues.

1 whether that was the contract or not between you  
2 and PayPal; is that right?

3 A. That is correct.

4 Q. Do you have an independent recollection  
5 of whether the contract that you entered into  
6 with PayPal mentioned autodialers at all?

7 A. No. I mean, I don't remember that.  
8 That was a while ago.

9 Q. Okay. So when you testified earlier  
10 today about who PayPal could call using its  
11 dialers, why did you say that earlier today?

12 A. If that were the -- that's what it says  
13 here, right?

14 Q. I'm asking you.

15 A. I think I'm confused with the question.

16 Q. Okay. So is it accurate to say that  
17 you don't remember what the contract between you  
18 and PayPal said?

19 A. Correct.

20 Q. You also testified earlier about the  
21 relationship between IC System and PayPal; do  
22 you remember that?

23 A. Yes.

24 Q. How do you know about the relationship

1 between IC System and PayPal?  
 2 A. Well, I would imagine that if IC System  
 3 was trying to collect an alleged debt, then that  
 4 was their relationship.  
 5 Q. Do you have any independent knowledge  
 6 as to the true relationship between IC System  
 7 and PayPal?  
 8 A. No.  
 9 Q. And finally, are you aware that this  
 10 lawsuit originally brought claims under two  
 11 federal laws?  
 12 A. Yes.  
 13 Q. Okay. One of them the Fair Debt  
 14 Collection Practices Act and one the Telephone  
 15 Consumer Protection Act, right?  
 16 A. Right.  
 17 Q. The class claims in this case relate to  
 18 the TCPA, don't they?  
 19 A. Which is the telephone one, correct,  
 20 yes.  
 21 Q. Having to do with autodialed calls and  
 22 prerecorded messages?  
 23 A. Correct.  
 24 Q. And the FDCPA portion of the case, what

1 e-mail after you opened your PayPal account?  
 2 A. I can't remember. It's a possibility.  
 3 Q. Would you in connection with your  
 4 responses to the defendant's discovery in this  
 5 case search your e-mail system and see if there  
 6 is a confirmation e-mail showing the opening of  
 7 your PayPal account?  
 8 A. Yes. I have, though, looked through my  
 9 e-mail with anything relating with eBay and  
 10 PayPal and IC System, and what I gave to Alex is  
 11 what I found, but I can search again.  
 12 Q. Okay.  
 13 MR. PEDERSON: Well, subject to our  
 14 reservation of the right to ask questions about  
 15 class certification, I do not have any further  
 16 questions right now.  
 17 MR. BURKE: Nor do I.  
 18 We'll reserve signature.  
 19 (Whereupon, the proceedings  
 20 concluded at 2:42 p.m.)  
 21  
 22  
 23  
 24

1 did that have to do with?  
 2 A. The TCPA?  
 3 Q. The FDCPA portion.  
 4 A. That is the one where they did not  
 5 identify the purpose of the call or who was  
 6 calling me.  
 7 Q. And we settled that portion of the  
 8 case, didn't we?  
 9 A. Correct.  
 10 MR. BURKE: That's all I have.  
 11 FURTHER EXAMINATION  
 12 BY MR. PEDERSON:  
 13 Q. Mr. Frausto, would anything refresh  
 14 your recollection as to whether you gave your  
 15 cell phone number to PayPal when you opened your  
 16 account or at any other time?  
 17 A. I don't believe so, no. I think  
 18 earlier, I had made an assumption that I did,  
 19 but I can't say for sure I inputted my phone  
 20 number.  
 21 Q. You can't rule it out, though?  
 22 A. I can't rule it out, but I can't say I  
 23 did give them my phone number.  
 24 Q. Did PayPal send you a confirmation

1 UNITED STATES DISTRICT COURT  
 2 NORTHERN DISTRICT OF ILLINOIS  
 3 EASTERN DIVISION  
 4 DIEGO FRAUSTO, )  
 5 Plaintiff, )  
 6 vs. )No. 10-cv-1363  
 7 IC SYSTEM, INC., )Judge Zagel  
 8 Defendant. )  
 9 This is to certify that I have read the  
 10 transcript of my deposition taken in the  
 11 above-entitled cause by BRENDA S. TANNEHILL,  
 12 Certified Shorthand Reporter, on January 18,  
 13 2011, and that the foregoing transcript  
 14 accurately states the questions asked and the  
 15 answers given by me as they now appear.

18 DIEGO IVAN FRAUSTO

19 SUBSCRIBED AND SWORN TO  
 20 before me this \_\_\_\_\_, day  
 21 of \_\_\_\_\_ 2011.

22 Notary Public

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1 STATE OF ILLINOIS )  
 2 ) SS:  
 3 COUNTY OF K A N E )  
 4 I, BRENDA S. TANNEHILL, a notary public  
 5 within and for the County of Kane County and  
 6 State of Illinois, do hereby certify that  
 7 heretofore, to-wit, on January 18, 2011,  
 8 personally appeared before me, at 222 North  
 9 LaSalle Street, Suite 300, Chicago, Illinois,  
 10 DIEGO IVAN FRAUSTO, in a cause now pending and  
 11 undetermined in the United States District  
 12 Court, Northern District of Illinois, wherein  
 13 DIEGO FRAUSTO is the Plaintiff, and IC SYSTEM,  
 14 INC. is the Defendant.

15 I further certify that the said witness  
 16 was first duly sworn to testify the truth, the  
 17 whole truth and nothing but the truth in the  
 18 cause aforesaid; that the testimony then given  
 19 by said witness was reported stenographically by  
 20 me in the presence of the said witness, and  
 21 afterwards reduced to typewriting by  
 22 Computer-Aided Transcription, and the foregoing  
 23 is a true and correct transcript of the  
 24 testimony so given by said witness as aforesaid.

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1 I further certify that the signature to  
 2 the foregoing deposition was not waived by  
 3 counsel for the respective parties.

4 I further certify that the taking of this  
 5 deposition was pursuant to Notice, and that  
 6 there were present at the deposition the  
 7 attorneys hereinbefore mentioned.

8 I further certify that I am not counsel  
 9 for nor in any way related to the parties to  
 10 this suit, nor am I in any way interested in the  
 11 outcome thereof.

12 IN TESTIMONY WHEREOF: I have hereunto  
 13 set my hand and affixed my notarial seal this  
 14 19th day of January, 2011.

15  
 16  
 17 *Brenda S. Tannehill*  
 18 Brenda S. Tannehill

19 NOTARY PUBLIC, KANE COUNTY, ILLINOIS  
 20  
 21  
 22  
 23  
 24



1 McCorkle Court Reporters, Inc.  
 2 200 N. LaSalle Street \* Suite 300  
 3 Chicago, Illinois 60601-1014  
 4 CERTIFIED MAIL  
 5 DATE: January 19, 2011  
 6 MR. DIEGO IVAN FRAUSTO  
 7 481 Diane Drive  
 8 Buffalo Grove, IL 60089  
 9  
 10 IN RE: Frausto v. IC System  
 11 DATE OF DEPOSITION: 01/18/2011  
 12  
 13 Dear Mr. Frausto:  
 14  
 15 Your deposition in the above-entitled cause is  
 16 now ready for reading and signing as required by  
 17 law.  
 18  
 19 Please call the Signature Department upon  
 20 receipt of this letter to schedule an  
 21 appointment to come to the above address to read  
 22 and sign your deposition. You have 28 days from  
 23 the date of this correspondence in which to  
 24 appear for reading and signing.  
 25 If you fail to keep this appointment or to  
 26 notify us so that we may make arrangements for  
 27 another appointment, your deposition will be  
 28 completed and forwarded to the attorneys and  
 29 will be "... used as fully as though signed."  
 30 \_\_\_\_\_ Procedure outlined in Rule 207 (a) of  
 31 the Illinois Supreme Court Rules  
 32 \_\_\_\_\_ Procedure outlined in Rule 30 (e) of  
 33 the Rules of Civil Procedure for the  
 34 U.S. District Courts  
 35  
 36 Sincerely,  
 37  
 38 Margaret Setina Court Reporter:  
 39 Signature Department Brenda S. Tannehill  
 40 cc: All Counsel of Record

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Draft Copy

12 (Pages 45 to 47)

McCorkle Court Reporters, Inc.  
 Chicago, Illinois (312) 263-0052

# Exhibit E

## Alex Burke

---

**From:** ppederson@hinshawlaw.com  
**Sent:** Friday, February 04, 2011 4:14 PM  
**To:** Alex Burke  
**Cc:** dschultz@hinshawlaw.com  
**Subject:** Re: Frausto prerecorded messages

IC left a message for Frausto when it made the following calls:

8-18-09 at 17.50 224-595-7867  
8-19-09 at 12.16 224-595-7867  
8-22-09 at 13.54 224-595-7867

(Times are in 24 hour format.)

The message left on these calls stated that, "Please contact I.C. System in regard to an important business matter at 1-888-241-8960. We are a debt collector attempting to collect a debt. Any information obtained will be used for that purpose. Again, please contact us at 1-888-241-8960."

IC did not leave any other messages for Frausto.

Peter E. Pederson  
Hinshaw & Culbertson LLP  
222 N. LaSalle St., Ste. 300  
Chicago, IL 60601  
Direct: 312-704-3604  
Fax: 312-704-3001  
[ppederson@hinshawlaw.com](mailto:ppederson@hinshawlaw.com)

"Alex Burke" <[ABurke@BurkeLawLLC.com](mailto:ABurke@BurkeLawLLC.com)>

02/02/2011 10:23 AM

To <[ppederson@hinshawlaw.com](mailto:ppederson@hinshawlaw.com)>

cc

Subject: Frausto prerecorded messages

Pete,

You and I spoke months ago about modifying the call log produced by ICS to include whether a message, prerecorded or otherwise, was left for plaintiff in each call.

I still don't have this information. My suspicion is that recorded messages were left in each call, but I need this information for my summary judgment motion. Can you please provide this information?

Alex Burke

## Burke Law Offices, LLC

155 N. Michigan Ave., Suite 9020  
Chicago, IL 60601  
(312) 729-5288  
(312) 729-5289 (fax)  
[ABurke@BurkeLawLLC.com](mailto:ABurke@BurkeLawLLC.com)  
[www.BurkeLawLLC.com](http://www.BurkeLawLLC.com)

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# Exhibit F

Exhibit F consists of recordings plaintiff received from ICS.

Please see included compact disc for Exhibit F

# Exhibit G

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

DIEGO FRAUSTO, )  
Plaintiff, )  
v. ) Case No. 10-cv-1363  
IC SYSTEM, INC., )  
Defendant. ) Judge Zagel

**ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S  
SECOND AMENDED COMPLAINT**

Defendant, I.C. SYSTEM, INC. ("IC"), submits the following as its Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint. IC states that at the hearing on September 30, 2010, the Court entered and continued the plaintiff's motion for leave to file the Second Amended Complaint pending the Court's ruling on the anticipated cross-motions for summary judgment. However, the minute order entered on October 5, 2010 (Docket # 17) stated that the motion for leave to file was granted. IC believes that the minute order was entered in error and that the Second Amended Complaint has not been properly filed and it is not the operative pleading. IC is filing this answer out of an abundance of caution and without waiving the foregoing position. IC was unable to obtain a transcript of September 30, 2010 hearing by the deadline to answer to the Second Amended Complaint because the court reporter was out of the office.

1. Plaintiff Diego Frausto ("plaintiff"), brings this action to secure redress for unlawful debt collection practice engaged in by defendant Credit Collection Services in violation of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Telephone Consumer Protection Act, 47 U.S.C. §227 and implementing regulations and orders.

**ANSWER: IC denies the allegations of paragraph 1 of Plaintiff's Second  
Amended Complaint.**

2. Defendant IC System, Inc. ("ICS") called plaintiff and left a prerecorded voice message that violated the FDCPA because the message did not identify ICS. Further, ICS violated the TCPA because it impermissibly called plaintiff and a class of similarly situated

persons on their cell phones using proscribed automatic telephone dialing system and prerecorded voice equipment.

**ANSWER:** IC denies the allegations of paragraph 2 of Plaintiff's Second Amended Complaint.

**JURISDICTION**

3. This Court has jurisdiction under 28 U.S.C. §§ 1331 (federal question), and 15 U.S.C. §1692k (FDCPA).

**ANSWER:** IC admits the allegations of paragraph 3 of Plaintiff's Second Amended Complaint.

4. Venue is appropriate because a substantial portion of the events that gave rise to this cause of action occurred here. Defendant's debt collection attempts were directed at plaintiff, who lives in the Chicago area.

**ANSWER:** IC admits on information and belief that plaintiff resides in the Northern District of Illinois. IC denies all remaining allegations in paragraph 4 of Plaintiff's Second Amended Complaint.

**PARTIES**

5. Plaintiff is an individual who resides in this District.

**ANSWER:** IC admits on information and belief the allegations of paragraph 5 of Plaintiff's Second Amended Complaint.

6. ICS is a debt collection agency has its headquarters in the Saint Paul, Minnesota area. ICS uses automatic telephone dialing systems and prerecorded messages to assist it in the collection of debts.

**ANSWER:** IC admits that it is a debt collector with its headquarters in St. Paul, Minnesota. IC admits that, in certain circumstances, it uses a telephone dialing system and prerecorded messages while attempting to collect debts. IC denies all remaining allegations in paragraph 6 of Plaintiff's Second Amended Complaint.

7. IC System is engaged in the business of collection of accounts, bills and other indebtedness, for others.

**ANSWER:** IC admits that it collects or attempts to collect debts owed to others in certain circumstances. IC denies all remaining allegations in paragraph 7 of Plaintiff's Second Amended Complaint.

### **FACTS**

8. ICS called plaintiff on plaintiff's cell phone using an automatic telephone dialing system and prerecorded voice message, in attempts to collect a debt allegedly owed to PayPal. Defendant has admitted to at least 38 such calls; plaintiff believes there were more.

**ANSWER:** IC admits that when it sought to collect a debt that the plaintiff owed to PayPal, it called the plaintiff at a telephone number that he had provided to PayPal. IC admits that it made these calls using a telephone dialing system that meets the definition of "automatic telephone dialing system" ("ATDS") set forth in the FCC's Declaratory Ruling, No. FCC 07-232. IC admits that it called plaintiff using its telephone dialing system a total of 38 times. IC lacks information or knowledge sufficient to admit or deny whether the number it called is assigned to a cellular telephone. IC denies all remaining allegations in paragraph 8 of Plaintiff's Second Amended Complaint.

9. Although it uses different types of dialers, ICS only used an "Avaya dialer" to call plaintiff. The Avaya dialer equipment ICS used to call plaintiff for all calls but two is located in St. Paul, Minnesota. The Avaya dialer is capable of dialing telephone numbers without human intervention. ICS used its Avaya dialer to call plaintiff as part of a dialing campaign, whereby no human being dialed plaintiff's telephone number.

**ANSWER:** IC admits that it used an "Avaya dialer" located in St. Paul, Minnesota, to call plaintiff. In further answering, IC admits that it made telephone calls in which plaintiff's number was not manually dialed by a human being. IC denies all remaining allegations in paragraph 9 of Plaintiff's Second Amended Complaint.

10. Upon information and belief, once a batch of debt and debtor information (including debtor telephone numbers) is loaded into the Avaya dialer, the "intelligent" dialer selects what numbers to call, and when to do so, and then dials them. It is not ICS' practice to obtain oral consent from debtors to receive prerecorded messages before leaving such a message.

**ANSWER:** IC denies the allegations in paragraph 10 of Plaintiff's Second Amended Complaint because IC's managers design dialing campaigns and decide the numbers that are called in IC's various dialing campaigns.

**COUNT I – FDCPA – INDIVIDUAL**

11. Plaintiff incorporates all previous paragraphs.

**ANSWER:** IC restates its answers to paragraphs 1 through 10 of Plaintiff's Second Amended Complaint.

12. 15 U.S.C. §1692d(6) requires that a debt collector making a telephone call provide meaningful disclosure of the caller's identity.

**ANSWER:** IC admits that this paragraph purports to paraphrase the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692d(6). IC denies that it violated any provision of the FDCPA.

13. The automated voice mail message that defendant left for plaintiff did not make a meaningful disclosure of the caller's identity.

**ANSWER:** IC denies the allegations of paragraph 13 of Plaintiff's Second Amended Complaint.

**COUNT II – TCPA PRERECORDED MESSAGE – CLASS**

14. Plaintiff incorporates all previous paragraphs.

**ANSWER:** IC restates its answers to paragraphs 1 through 13 of Plaintiff's Second Amended Complaint.

15. The TCPA, 47 U.S.C. §227(b), prohibits calling persons on their cell phone using an automatic telephone dialing system, and prohibits calling persons on their cell phone using a prerecorded message.

**ANSWER:** IC denies the allegations of paragraph 15 of Plaintiff's Second Amended Complaint.

16. Plaintiff brings Count II on behalf of a class pursuant to Rule 23(b)(2) and 23(b)(3). The class is defined as:

All persons with Illinois cell phone numbers (a) who ICS called using its Minnesota-based Avaya dialer; (b) where ICS used a pre-recorded voice; (c) in an attempt to collect an alleged PayPal debt; (e) [sic] where the PayPal contract was identical to that of plaintiff; and (e) any such call was made by ICS at any time between August 1, 2009 and August 30, 2009. Excluded from the class are persons who, according to ICS' records, did *not* provide the phone number called to ICS or to PayPal, and did not otherwise attempt to revoke consent to receive such calls.

**ANSWER:** IC admits that Plaintiff seeks to bring his TCPA claim on behalf of the class defined in paragraph 16 of Plaintiff's Second Amended Complaint. IC denies that the TCPA claim can be certified as a class action. IC denies all remaining allegations of paragraph 16 of Plaintiff's Second Amended Complaint.

17. Upon information and belief, there are more than 50 members of the proposed class; sufficient to satisfy the numerosity requirement.

**ANSWER:** IC denies that the TCPA claim can be certified as a class action. IC denies all remaining allegations of paragraph 17 of Plaintiff's Second Amended Complaint.

18. Common questions of law and fact exist as to all members of the class and predominate over any questions solely affecting any individual member of the class, including plaintiff. Such questions common to the Class include, but are not limited to:

- a. Whether defendant used an automatic telephone dialing system and/or an artificial or pre-recorded voice within the meaning of the TCPA with respect to telephone calls to class members' cellular phones;
- b. Whether such practices violate the TCPA; and
- c. Damages

**ANSWER:** IC denies that the TCPA claim can be certified as a class action. IC denies all remaining allegations of paragraph 18 of Plaintiff's Second Amended Complaint, including subparts (a), (b), and (c).

19. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has no interests that might conflict with the interests of the class. Plaintiff is interested in pursuing his claims vigorously, and has retained counsel competent and experienced in class and complex litigation.

**ANSWER:** IC denies that the TCPA claim can be certified as a class action. IC denies all remaining allegations of paragraph 19 of Plaintiff's Second Amended Complaint.

20. Class action treatment is superior to the alternatives to the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would entail.

**ANSWER:** IC denies that the TCPA claim can be certified as a class action. IC denies all remaining allegations of paragraph 20 of Plaintiff's Second Amended Complaint.

21. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy.

**ANSWER:** IC denies that the TCPA claim can be certified as a class action. IC denies all remaining allegations of paragraph 21 of Plaintiff's Second Amended Complaint.

22. Defendant has acted on grounds generally applicable to the class, thereby making relief appropriate with respect to the class as a whole. Prosecution of separate actions by individual members of the class, should they realize their rights have been violated, would likely create the risk of inconsistent or varying adjudication with respect to individual members of the class that would establish incompatible standards of conduct.

**ANSWER:** IC denies that the TCPA claim can be certified as a class action. IC denies all remaining allegations of paragraph 22 of Plaintiff's Second Amended Complaint.

23. The identity of the class is likely readily identifiable from defendants' records, or through other administrative means.

**ANSWER:** IC denies that the TCPA claim can be certified as a class action. IC denies all remaining allegations of paragraph 23 of Plaintiff's Second Amended Complaint.

24. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable.

**ANSWER:** IC denies that the TCPA claim can be certified as a class action. IC denies all remaining allegations of paragraph 24 of Plaintiff's Second Amended Complaint.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

1. If IC violated the FDCPA, which IC denies, the violation was unintentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such error.

2. IC's telephone dialing system is programmed to only leave messages that disclose IC's identity. IC does not leave any messages that fail to disclose its identity.

3. If plaintiff's answering machine or voicemail recorded a message from IC that did not disclose IC's identity, plaintiff's cell phone, cell phone network, or answering machine failed to record the portion of the message which disclosed IC's identity.

4. IC's practice of only leaving messages that disclose its identity constitutes a procedure reasonably adapted to avoid the FDCPA violation that plaintiff has alleged.

**SECOND AFFIRMATIVE DEFENSE**

1. Plaintiff's Second Amended Complaint fails to state a claim upon which relief may be granted.

**THIRD AFFIRMATIVE DEFENSE**

1. A call made to a cell phone using an automatic telephone dialing system or prerecorded message ("an auto-dialed call") violates the Telephone Consumer Protection Act ("TCPA") only if it is made without the called party's consent. 47 U.S.C. § 227(b)(1). When a person gives his cell phone number to a creditor in connection with a debt, he gives consent for a debt collector seeking payment of the debt to make auto-dialed calls to that number. Federal Communications Commission Declaratory Ruling, FCC 07-232, ¶ 9.

2. Plaintiff gave his creditor the phone number that IC called when it tried to collect his debt. Thus, IC's calls to plaintiff could not have violated the TCPA.

3. In addition, in plaintiff's agreement with the creditor, plaintiff expressly consented to receiving auto-dialed calls at the phone number he provided.

4. Because IC's calls did not violate the TCPA, plaintiff has not stated a claim for relief under the TCPA, and he lacks constitutional standing to bring such a claim.

#### **FOURTH AFFIRMATIVE DEFENSE**

1. The TCPA allows a person to recover actual damages resulting from a violation of the statute or to receive \$500.00 per violation, whichever is greater. The TCPA provides for the trebling damages if the violation was willful.

2. If for the sake of argument a TCPA class were certified and the class contained several thousand people, liability to the class could potentially be so great as to result in defendant's insolvency.

3. The due process clause of the Fifth Amendment to the U.S. Constitution prohibits an award of damages that would result in iQor's insolvency, especially where, as here, the conduct that allegedly violated the TCPA did not cause actual injury or damages to the plaintiff or class members.

#### **FIFTH AFFIRMATIVE DEFENSE**

1. In the event that the portion of the FCC Declaratory Ruling No. 07-232 which brings predictive dialers within the TCPA's definition of an "automatic telephone dialing system" is invalidated or withdrawn, IC will argue that its phone system does not amount to an ATDS under the statutory language set forth in 27 U.S.C. § 227(a)(1).

#### **SIXTH AFFIRMATIVE DEFENSE**

1. Plaintiff's claims are barred by the statute of limitations.

#### **SEVENTH AFFIRMATIVE DEFENSE**

1. Plaintiff's claims are moot.

**EIGHTH AFFIRMATIVE DEFENSE**

1. Plaintiff's claims are barred based on the doctrine of waiver.

**NINTH AFFIRMATIVE DEFENSE**

1. Plaintiff's claims are barred based on the doctrine of estoppel.

**TENTH AFFIRMATIVE DEFENSE**

1. Plaintiff lacks constitutional standing to assert a TCPA claim because she consented to be contacted at the number she contends is assigned to her cell phone.

WHEREFORE, Defendant, I.C. SYSTEM, INC., respectfully requests that this Court deny the relief sought in Plaintiff's Second Amended Complaint, enter judgment in Defendant's favor and against plaintiff, and award Defendant its costs.

David M. Schultz  
Peter E. Pederson  
Avanti D. Bakane  
HINSHAW & CULBERTSON LLP  
222 N. LaSalle Street, Suite 300  
Chicago, Illinois 60601  
(312) 704-3000  
Fax: (312) 704-3001  
[dschultz@hinshawlaw.com](mailto:dschultz@hinshawlaw.com)  
[ppederson@hinshawlaw.com](mailto:ppederson@hinshawlaw.com)  
[abakane@hinshawlaw.com](mailto:abakane@hinshawlaw.com)

Defendant IC SYSTEM, INC.  
By: /s/ Avanti D. Bakane  
One of its Attorneys

**CERTIFICATE OF SERVICE**

The undersigned attorney certifies that on October 25, 2010, I served this document by filing it with the Court's CM/ECF system, which will make copies of the documents available to the following counsel of record.

Alexander H. Burke, Esq.  
ABurke@BurkeLawLLC.com  
BURKE LAW OFFICES, LLC  
155 N. Michigan Avenue, Suite 9020  
Chicago, Illinois 60601

/s/ Avanti D. Bakane

# Exhibit H



Home

Adjust font size    

## Search Licensees (to find and verify a person or entity is licensed)

**State** Minnesota  
**Board** Debt  
**Inquiry Date** 03/31/2011 09:35 AM

### IC SYSTEM INC

**Business Location Address** 444 E HWY 96  
 P O BOX 64444  
 ST PAUL, Minnesota 551640444  
**Business Phone Number** 651-483-8201  
**Fax Phone Number**

### Licenses

Collection Agency				
License Number	Original Issue Date	Status	Effective Date	Expiration Date
8000009	10-15-1941	Active	07-12-1989	06-30-2011

### Aliases

Former Name			
Name:	Effective Date	End Date	License Type
CREDIT PROTECTIVE SVC OF IC SYS INC	02-17-2007		

### Individual Associations

Displaying records 1 through 50 of 214

Next 50

Full Name	License Number	License Type
ACOSTA , BEATRIS	40159634	Debt Collector
ALLISON , NYENATI	20175115	Debt Collector
ALWIN , ANGELA	20498769	Debt Collector
ANDAZOLA , RICHARD	40238503	Debt Collector
ANDERSON , CINDY	40106480	Debt Collector
ANDERSON , ERIC	20104389	Debt Collector
AREVALO , JOSE	40194191	Debt Collector
ARRIETA , DULCE	20601955	Debt Collector
arsenal , natasha	40168102	Debt Collector
BACON , RYAN	20442156	Debt Collector

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BAKER , KRISTY	40095806	Debt Collector
BARRON , ELIZABETH	40118320	Debt Collector
BECKSTROM EHLERS , MICHELLE	3000591	Debt Collector
BERGLUND , JOEL	40118339	Debt Collector
BERKEN , DAVID	20475363	Debt Collector
BJORKLUND , KATHRYN	40194231	Debt Collector
BLUHM , DEBRA	20180046	Debt Collector
BORNER , AMANDA	40085519	Debt Collector
BRANTLEY , DENISE	20479083	Debt Collector
BRAYLOCK , ERIC	20042780	Debt Collector
BREHEIM , BRIAN	40065606	Debt Collector
BREIMHORST , DANE	20604802	Debt Collector
BROWN , KELLY	20584529	Debt Collector
BROWN , TINA	20623624	Debt Collector
BUNKER , DENISE	40095714	Debt Collector
BUNKOWSKE , PATRICIA	20068870	Debt Collector
BYE , CHRISTINA	40159695	Debt Collector
BZDOK , ROXANNE	20307855	Debt Collector
CAMPBELL , VANCE	20620559	Debt Collector
CANTY , ANDRIA	40096651	Debt Collector
CARPENTER , AMANDA	20224558	Debt Collector
CARROLL , HEIDI	20454072	Debt Collector
CARROLL , LAURA	20624334	Debt Collector
CHIRIAC , SILVIU	40106509	Debt Collector
CLANCY , TERRY	40106507	Debt Collector
CLASEMAN , MARY	20260289	Debt Collector
CLAY , CHEVIE	40238479	Debt Collector
CLAY , DONALD	20522768	Debt Collector
CLEVELAND , JEREMY	20160121	Debt Collector
CONNELL , CHRISTINE	40183481	Debt Collector
COWAN , PIERRE	40128637	Debt Collector
CRAWFORD , KERISSA	20375045	Debt Collector
CURTIS , PATRICIA	40056142	Debt Collector
DALLUHN , MICHELLE	20442190	Debt Collector
DANIELSON , THOMAS	20009107	Debt Collector
DAVIS , TIFFANY	20493311	Debt Collector
DETERMAN , CHAD	20361071	Debt Collector
DIERENY , TERESA	40128538	Debt Collector
DIGRE , KENT	20564606	Debt Collector
DIXON , DEVARIOUS	40230473	Debt Collector

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